IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE**

**and**
**THE HON'BLE MR JUSTICE M.NARAYANA REDDY**

**WRIT APPEAL NO : 193 of 2005**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 02/02/2005 in WP NO : 23842 OF 2004 on the file of the High Court.)

Between:

M/s. Food World, rep. by its Managing partner, Pekeerabad Sanjeev Kumar, S/o. Babu Rao, Manasa Sarovar
G.T.Bi-Pass Road, Guntur.

**..... APPELLANT**

AND

Guntur Municipal Corporation, rep. by its Commissioner, Guntur.

**.....RESPONDENT**

**Counsel for the Appellant: Mr C.KODANDA RAM**

**Counsel for the Respondent : MR.T.S.VENKATA RAMANA**

**The Court at the admission stage made the following :**

ORAL ORDER: (per the Hon'ble the Chief Justice)

Challenge in this appeal is to the order of the learned single Judge dismissing the writ petition and reserving liberty to the petitioner-appellant to make representation before the respondent for return of the movable articles.

Appellant, a lessee under the respondent-Corporation with respect to a parcel of land, buildings and cottages for restaurants in Mansa Sarovar Park, Guntur for the period expiring on 30th June, 2005 under agreement of lease dated 1st July, 2002 feeling aggrieved against the action of respondents in terminating the lease by notice dated 18-12-2004 and directing to handover possession of the leased premises within 24 hours of the receipt of notice filed writ petition on 20th December, 2004. Challenge to the impugned termination of lease by notice dated 18-12-2004, inter alia, was on the ground that respondent, as lessor, in case had to exercise its right of termination of lease, it can be done only under the terms of lease by serving one month's notice in advance. In any case termination of lease was arbitrary, illegal and mala fide exercise of power vested in the respondent on extraneous grounds.

Learned single Judge called upon the respondent to file reply which filed its counter affidavit and on going through the affidavit of the aggrieved party, learned single Judge proceeded to dismiss the writ petition on the ground that such disputes between parties pursuant to non statutory contracts voluntarily entered into by the parties cannot be made subject matter of proceedings under Article 226 of the Constitution.

May be that petitioner-appellant's lease was terminated arbitrarily and in violation of the terms of the lease agreement. The period of one month is over as of today and at the most, the illegal termination of the lease or premature termination of lease contrary to the terms of the lease, can only be subject matter of proceedings in

appropriate proceedings taken out in Civil Court, may be for claiming compensation or for damages. Learned single Judge was justified in observing that it will not be proper in such like disputes to exercise jurisdiction under Article 226 of the Constitution.

Learned counsel for the appellant tried to urge mala fides on the part of the Municipal Commissioner and urged that learned single Judge did not record any finding thereon. Be that as it may, such allegations as to mala fides, in the absence of the Commissioner being party to the proceedings, could not have been urged and even made part of the order by learned single Judge.

Learned counsel for the appellant submits that there are some movables, fixtures, fittings and furniture of the appellant lying in the premises, which are presently locked. Learned single Judge simply permitted a representation to be made by the petitioner-appellant to be decided by the respondent.

There is no dispute that petitioner was in occupation of the leased premises and was asked to handover possession within 24 hours. Respondent has, on failure of the appellant to handover possession, locked the premises.

Therefore, while dismissing the appeal, we will direct the respondent to permit the petitioner-appellant to take away its fittings, furniture and fixtures within a period of one week from today. On the petitioner-appellant approaching the respondent, necessary help will be rendered in order to enable the appellant to take away its furniture, fittings and fixtures without causing any damage to the property.

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DEVINDER GUPTA, CJ

8-2-2005

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M.NARAYANA REDDY, J

Tvr

Note:

Issue cc on 9-2-2005

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To

1. The Commissioner, Guntur Municipal Corporation, , Guntur.

2. 2 CD copies.